FILED
COURT OF APPEALS
DIVISION II
2019 DEC -2 AM 8:25
STATE OF WASHINGTON
BY ____ DEPUTY

52916-5-II

No. [illegible]

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

JOHN M. SANCHEZ
Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR THURSTON COUNTY

The H[illegible]
Cause No. 1[illegible]

[illegible] VI_W

Statment of additional grounds
and request for lawyers suppliment on issues

[illegible]
Attorney for Respondent

Olympia, Washing[illegible]n 98502
(360) 786-5540

Table of contents

Denial of unanimous verdict

1. ✓ a) without a petrich instruction or unanimity limited particular instruction was unanimity awarded for all jurors to agree to the specific act that resulted in the charge & was erroneous instructions as a whole harmless error?

✓ B) ~~Jury instruction #6~~ ~~did~~ the prosecutor made inadmissable improper statments in closing and dismissal argument & thus prejudice jury against defendant and deny fair trial, caselaw standards and was not harmless.

✓ C.) ~~did~~ the court improperly denied imperative defense exhibits "indigent log" direct self-evident another party sent the letters?

✓ D.) It was ~~was~~ ~~it~~ ineffective council allowing erroneous to convict and jury instructions as well as not certifying imperative evidence for defense that was suppressed?

✓ E) there isn't ~~is~~ ~~there~~ sufficient evidence to support witness tampering in light of testimony and reaction of alleged victim?

f.) there is not a ~~is there a~~ proper chain of custody other than speculation in a evidence format to the charge of witness tampering?

g.) ~~does~~ the massive accumulation of errors constitute a new trial or dismissal

h) can constitutional sufficiency of charges be upheld with a constitutionally defective scope of predicate order lacking essential elements of a culpable act? which without that foundational requirment is insufficient to support a conviction.

I.) Defense that negates an element of charged crime

J) ~~the~~ the court erroed in denying the arrest of Judgment

~~the~~ the court erroed in not DISMISSing case

K) It was
~~does it~~ ineffective counsel ~~to~~ to delay filing client ~~fronks~~
Motions for evidentiary hearing challenging probable cause
and sufficient evidence? Such as fronks, Brady, giglio, napue,
Veney Bloood hearings?

L) conflict of interest with counsel severly prejudiced
client

~~Statement of Case~~

Statment of Case

1. A unchallenged finding of fact entered by a trial court IS a verity before a reviewing court Such

(A3) as the scope of a predicate order and the practice of the rule of lenity. without the foundational requirment needed from the predicate order In this case A NCO that doesnt specify a address ~~but~~ Says "person" by rule of lenity IS ambiguous and doesnt meet such requirments stated

2. In (argument 1). Neither does It follow rcw 26.50.110(1)(ii)(iii)

(A4) a specific location or 10.99.020(5)(R) a prohibited specific

3. address. A trial proceeded with alleged contact with a address not specified in the NCO with a attorney that was previously barred with a filing of action VS office of

(A5) assigned counsel In which counsel IS employed by. ~~IS was~~ OAC IS committing procedural Manifest error by representing

3. (cont) citizens w/o consent, Authorization or court order in initial bail setting hearing/arraignment w/o meeting w/ citizen prior to hearing to develope a tailored argument for release conditions. A pending CNIL suit is orchestrated. Thus in conflict w/ OAC and conflict lawyer entitled. Patrik oconner director of OAC was Notified and appointment

4. of OAC was in error. Trial commenced with faulty

(A6) instructions including the court and prosecutor agreeing to lump the specific elements that needed to be proven for

(A6)(1,2) a unanimous verdict to instead be lumped into one element.

5. defense argued the repercussions and implications of such a

(A6)(3) act. court and the state refused to listen and instead

6. imposed the lump element which defense was forced to

(A6)(4)
(A7)(8) concede to.

7. Court then directed the Jury to only follow the
(A7)(1) instructions including the lump element and the
uncharged means included in that element of "absent
(A7)(5,6,7) herself from any proceeding". which thus compromised
the trial Mentioned in (argument 2). The defense then
8. Questioned states witness on the "running Mail log" that
(A8)(1-7) was coorobarated by the witness to exist and the state
already conceeded "Kyle Baker" was the ~~name as~~ verified
name as the sender. Defease then attempted to enter verified
9. "Running Mail log" yet failed to certify the redacted copy
(A8)(8-19) from the public disclosure request and failed to give a copy
of the exhibit to court. State objected based on relevance
and foundation in direct conflict with their own witness
verifying it was indeed the "running Mail log". Court sustained
objection and denied Imperative defense exhibit.

9. (cont) Thus directly impacting defense which necessitates ineffective counsel Mentioned in (argument 3). The states

10. only evidence is a letter (A9)(8) that the state concedes (A9)(1-8) does not copy well and is hard to read (a9)(1-3) The court concedes the piece of "evidence" is problematic due to its inherent difficulty to read (a9)(4-5). States witness was called to read it into the record stating "but atleast its not --- and I cant read the writing on that part" (a9)(6) and "return calls and not --- and again I cant read the writing" (a9)(7). which does not satisfy the element needed in this case.

11. State then called the alleged victim to verify the element (A9)(9-12) needed which when asked what stood out responded "just the stuff that is mean, the name calling" (A9)(10) and in response to if asked to do something replied "not anymore" (A9)(12). which further validates the necessary element doesn't exist. which necessitates insufficient evidence Mentioned in (argument 4).

12. Defense motioned for dismissal and was responded by the (A10)(14-16) State Quoting the uncharged element (A10)(14) and entered their own testimony on what the letter said stating = but atleast its not to to liter "and" returning calls and not testifying "(A10)(16) In complete contradiction to what was read into record by states own witness. Court denied dismissal. In closing argument 13. state continued such conduct by stating the letter says "not to testify" (A10)(4-9) and "not to to liter" 6 distinct seperate times (A10)(4-9) which (A10)(11) was testimony never entered as well as arguing the specific 14. uncharged element (A10)(11). To further confuse, taint and (A10)(2,10) prejudice the jury State twice states = state must prove each and every element of the crime". (A10)(2,10) Yet refused to seperate elements (A6)(1) and the court refused to seperate the elements (A7)(8) which is self-evident of a contradiction. each and every element cannot be proven in a lump element.

15. State then declares the lump element IS what the state must (A10)(1,12,13) prove to get a guilty verdict (A10)(12) which cements the contradiction. To further the insult directs the Jury The law IS the instructions twice (A10)(1,13). Court

16. also directs Jury "law IS the instructions" (A7)(1) amplifying The lump element specifically (A7)(6) and the uncharged element specifically (A7)(7). Then states counts duty of exhibits court admitted (a7)(2,3) yet contradicts itself stating = each party IS entitled to the benefit of all the evidence". (A7)(4). followed by states direction to only consider evidence that was presented. (A10)(3). The impermissible closing of the state IS Mentioned in (argument 5) cementing the use of inadmissible evidence and the obvious misleading through misstatments that IS manifest and IS directly prejudicial.

17. Trial counsel withdrew due to conflict mentioned in 3 case (A5) point 3 (A5) New counsel found error in conviction for a (A2) uncharged element and timely challenged (A2) which was denied by the same court that contradicted itself in trial.

18. Comulative error argument is entered due to the vast errors of constitutional manifest magnitude mentioned in (argument 6)

Argument I

INSufficiency of evidence

ambiguous accusatory instrument, Rule of lenity, culpable act, scope of predicate order; full essential element

1. dismissed defendants burglary conviction because he could not have burglarized the residence by entering and remaining unlawfully, as neither a court order nor the victim had lawfully excluded him from it. The No contact order did not prohibit defendant from entering the home (State v Wilson 136 Wn app 596)

2. The following uncontroverted facts of significance is the No contact order did not prohibit entering or remaining at the residence, The No contact order left person's residence blank, thus the No contact order language ~~prohibited~~ did not prohibit from entering or getting near any specific location.

Thus we ~~find~~ treat this finding as a verity on appeal.
(Waugh v Dunstan & Dunstan INC. 67 Wn 2d 710)

3. The court may specifically tailor a protection order to the circumstances by including multiple provisions forbidding the respondent from a variety of misconduct toward the petitioner. (RCW 26.50.060) (Spence v Kaminski 103 Wn app 325)

4. here the court that issued the No contact order did not specifically tailor the order to exclude from a specific address although it could have easily excluded by filling in the prohibited address it did not do so. thus the No contact order provisions did not thereby criminalize, or transform into a burglary.
(State v Wilson 136 Wn app at 34)

I. Insufficiency of evidence

5. The culpable act necessary to establish the violation of a No contact order is determined by the scope of the predicate order. (City of Seattle V edwards 87 wn app 305)

6. The No Contact order is essential to prosecute the violation of the order. A conviction cannot be obtained without producing the order as it will identify the specific protected location. (edwards 87 wn app at 308)

7. A violation of a No contact order is committed only by contact with a specific particular person or location included in the order. (City of Seattle V termain 124 wn app 798)

8. A constitutionally defective information omits essential elements. A vague information states the elements but is vague about significant matter." (113 wn 2d at 686-87)

9. that without establishing that foundational requirment is insufficient to support a conviction. (Seattle V edwards 87 wn app 305)

10. under the rule of lenity, an ambigwity in a protective order is resolved in favor of the party restrained by the order (State V Mcgee 122 wn 2d 783)

11. cannot allow a conviction to stand where the State has not given fair notice of the proscribed conduct (Becker 132 wn 2d at 61)

12. Validity of a order is a foundational requirment of the crime, thus a burden of disproving validity cannot be placed on defendent. (Lively 130 wn 2d at 10-11)

Argument 2.

Jury Instructions: Harmless error analysis.

1.) Instructional error is prejudicial unless showing harmless error (State v Smith 131 wn 2d at 263-64)

2.) failure to instruct on an element of a offense is reversible error (Smith 131 wn 2d at 265)

3.) omission of a element of a crime is fatal error because it relieves State of its burden of proving every essential element beyond a reasonable doubt (Eastmond 129 wn 2d at 503)

4.) reversal required even if there were valid instructions if jury might have convicted relying upon other instructions for which conviction was impermissible. State v Garcia 829 P 2d 241)

5.) State must elect the act it relies on to convict or provide a unanimity instruction. (State v Petrich 101 wn 2d 566)

6.) Conviction only when unanimous jury concludes criminal act charged in information has been committed. (Petrich 101 wn 2d at 569,

7.) Must have specific act for crime charged it relies on or give "petrich" instruction. All 12 Jurors Must agree to same underlying criminal act has been proven beyond a reasonable doubt, failure is constitutional.
(State V Kitchen 110 wn 2d 403)

8.) entitlement to express unanimous Jury determination to which means forms the basis. (State V owens 180 wn 2d 90)

9.) without limiting instruction cannot be sure of Jury unanimity and must reverse. (State V lobe 140 wn app 897)

10.) we presume Jury follows instructions. (State V emery 174 wn 2d 741)

11.) An instruction on uncharged alternatives is not harmless unless other instructions clearly specifically define charged crime. (State V Mcdonald 183 wn app 272)

12. Manifest constitutional error is failing to require a unanimous verdict and omitting a element of the crime charged.
(State V Scott 110 wn 2d 682), rap 2.5

Jury instructions harmless error analysis

13. error of constitutional magnitude is presumed prejudicial state bears the burden of proving error was harmless beyond a reasonable doubt (State v Spotted elk leg wrapper

14. error isn't harmless if prejudiced a substantial right beyond a reasonable doubt and affected outcome of case (State v Wanrow 88 Wn 2d 221)

15. under the 6th amendment and Wa const Art 1 § 22 (amend 10) an information must include the essential common law elements of the crime charged in order to apprise the accused of the nature of the charge to be able to prepare a adequate defense. A charging document that does not articulate all of the elements of the crime violates the defendants due process rights. (State v Wallway 72 Wn app 407)

16. All essential elements of a crime must be included in a charging document in order to afford notice to an accused of the

Jury Instructions

16. (cont) nature and cause of the accusation against him.
(State v Kjorsvik 117 wn 2d 93)

Supreme Court Authority and RCW

1. held that Jury instructions imposing conclusive presumptions as to the core elements of the crime violated defendants right under Due-process clause of the 14th amendment.

which:

= denies States the ~~right~~ power to deprive the accused of liberty unless the prosecution proves beyond a reasonable doubt every element of the charged offense."
(491 US at 265 (citing In re Winship 397 US 358)

2. = Jury instructions relieving States of this burden violates a defendant's due process rights"
(Francis v Franklin 471 US 307)

3. = instruction that criminal intent was presumed from defendant's conduct would conflict with the overriding presumption of innocence with which the law

Supreme Court Authority (cont) and RCW

3. endows the accused and which extends to every element of the crime.
(Sandstrom V Montana 442 US 510)

4. an instruction defining "intent" in the words of this statute is required when intent is an element of the crime charged.
(State V Allen 101 Wn 2d 355)

RCW 9A.08.010 requirments of culpability

1. (a) intent - person acts with purpose ~~to~~ which constitutes a crime.
(3) - Determine culpability is established with respect to material element of the offense.
(4) - acts knowingly with respect to the material elements of the offense.

Argument 3

Ineffective council

1) right to effective assistance of counsel.
(us const amend VI) (Wash const art I §22)

2.) Has a constitutional right to present evidence in own defense. (State V Thomas 150 wn 2d 821)
(State V Maupin 128 wn 2d 918)

3. facts or circumstances that clearly point out someone besides the accused. (State V Davis 168 wash 664)

4.) That may neutralize or overcome States circumstantial by presenting evidence that identify another person as the perpetrator of crime. (State V Clark 78 wn app 471)

5.) As the proponent of the evidence, the defendant bears the burden of establishing relevance and materiality.
(State V Pacheco 107 wn 2d 59)

6. when inadmissible evidence is introduced must object.
(State V Weber 159 wn 2d 252)
(State V Sullivan 69 wn app 167)

Ineffective Council

7. Deficient performance occurs when counsel's performance falls below an objective standard of reasonableness. (State v Stenson 132 Wn 2d 668)

8. Rules of evidence ER 401
relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Argument 4.

Insufficient evidence

1.) Jackson Standard - rational trier of fact find the essential elements beyond a reasonable doubt.
(Jackson v Virginia US 307, 99 S.Ct 2781)
(State v green 94 wn 2d 216)

2.) where the state assumes the burden of proof on an element and we find that there is insufficient evidence on that element, we must reverse the conviction and dismiss with prejudice (State v hickman 135 wn 2d at 103)

3.) State failed to introduce sufficient evidence of proof.
(State v chamroeun nam 136 wn app 498)

4.) Confrontation Clause violations are reviewable.
(State v larry 108 wn app 894)

5.) evidence was insufficient to support conviction because witness was asked to stop her from providing information to police, not to influence her testimony
(State v brown 162 wn 2d 422)

Insufficient evidence

6. A request that the victim drop the charges did not amount to a request to withhold testimony or promise to induce the victim to withhold testimony (rempel 114 wn 2d at 83)

7. Conviction which is devoid of evidentiary support as to crucial elements of offense is unconstitutional under 14th amendment. (Brooks v Rose 520 f 2d 775)

Argument 5.

Closing argument Impermissible statments inadmissable

1.) allowed wide latitude to draw reasonable inferences from the evidence and to express such inferences to jury (State v Stenson 132 wn 2d 668)

2.) claiming prosecutor misconduct bears burden that conduct was improper and it prejudiced the defendent. (State v harvey 34 wn app 737)

3. review improper comments in context of argument, issues in case, evidence addressed in ~~case~~ argument, and instructions to jury. (State v bryant 89 wn app 857)

4.) right to a fair trial is denied when prosecutor makes improper comments with a substantial likelihood comments effected jury's verdict (State v reed 102 wn 2d 140)

5. that within reasonable probability the error materially affected the trials outcome (Eaton 30 wn app at 295-96)

6. The additional evidence before the jury probably had a effect on the verdict (Eaton 30 wn app at 297)

closing argument

(*) 7. There is no right to present irrelevant or inadmisable evidence (State v hudlow 99 wn 2d 1)

NO / 8. There is reasonable possibility the use of inadmissible evidence was necessary to reach a guilty verdict. (State v guloy 104 wn 2d 412)

(*) 9. prosecutor may not mislead the jury through misstatements of the law or the evidence. (State v reeder 46 wn 2d 888)

10. the alleged error is manifest by demonstrating actual prejudice. (McFarland 127 wn 2d at 333)

11. opinion of guilt directly or through inference is equally improper and inadmissible because it invades the province of the jury. (State v haga 8 wn app 481)

Case law prosecution closing argument

1. 9.09 Closing arguments - prosecutor MIS conduct Vol 1 C9

2. NDAA Standards urge prosecutors closing argument characterized by reliance upon the evidence and by fairness, accuracy and rationality
(NDAA prosecution standards std 85.1)

3.) Nolan Standards Suggest prosecutor be able to comment on failure of defense to call a particular witness.
(People v Munson 63 A.D.2D 686, ~~Vol AA~~

4. Closing argument is to enlighten~~ment~~ the jury and help the jurors remember and interpret the evidence
NDAA prosecution Standards 8 to 85.1-85.4)

Argument 6.

Cumulative error requiring reversal

1.) The accumulated errors committed by the trial court necessitate a new trial. (Coe 161 wn 2d at 789)

2.) Must be certain the verdict is unanimous (Badda 63 wn 2d at 183)

3. combined effect of accumulation of errors constitute grounds for reversal and a new trial. (State v Simmons 59 wn 2d 381) (State v Swenson 62 wn 2d 259)

4. When combined with prosecutors inadmissible improper closing remarks prevented a fair trial. (Alexander 64 wn app at 158)

5. The errors in admission of evidence, the jury instructions and jury access to a exhibit required reversal of conviction. (State v Coughlin 26 wn app 74)

6. Unable to say from the record if def would have been convicted but for the several errors, we reverse (State v Martin 73 wn 2d 616)

Conclusion and Remedy

1. application of law that IS right and equitable IS a foundation for administration of justice, to apply the

2. laws evenly, treated fairly and receive the same rights IS the standard conduct of legal obligation in the System of Justice.

3. when there is erroneous Judgment that involves a mistake or deviation from court rules in contrary to citizens constitutionally protected rights and commits that error in exercise of court appointed power. which

4. directly cause injury of the legal rights of the citizen to act

led to the events requires a Mandatory injunction.

5. The change of arguable scope supports a worsen change of position to act and is detrimentally reliant to restore parties to the "status quo"

5. (cont) Situation at inception and a rescission to return to

6. positions occupied. ~~Being twice forced to trial one week [illegible] which I was forced to waive pro se or placed to trial unprepared and without any motions heard on 8-22-19 then on 4-8-19 within seconds of a lawyer withdrawing from his own trial are~~ terms so one sided to amount to absence of meaningful choice to one party and unreasonably favorable to the state which by definition is

7. unconsionable. Such a act will bring about certain evils that government has a right to prevent and is a clear and present danger of officials acting beyond authority a ultra vires as they are not being bound by crr's, speedy trial or appropriate discretion which is a conflict with those rules as 'no one should be punished for refusing obedience to unconstitutional law.

Argument

for the unethical prosecutor the closing argument is a opportunity to poison the minds of the jurors, to use language not as a tool for truth but an instrument of destruction.

wrttamp

Conclusion

1. There is a substantial likelihood that the cumulative effect of the prosecutors improper ~~con~~ statments usurped the Jury's fact-finding and credibility-determination functions thus a remand for new trial.
(State v Jungers 125 wn app 895)

2. Court cannot affirm a Jury verdict based on erroneous "to convict", "Jury" instructions ~~including~~ ~~elements~~ that do not 100% mirror charging documents citizen is fighting.

3. The accumulation of NON-reversible errors deny citizens fair trial (State v Coe 101 wn 2d 772) such as impermissible closing statments to include "testify", the failure to properly instruct Jury, improper to convict instructions, denial of defense exhibits "negligent log" which also leads to ineffective council requires a reverse and remand for new trial.

wit tamp

Conclusion Cont.

3. cont.) (State v Gooda 63 wn 2d 176) at 183
(State v alexander 64 wn app 147) at 158
(state v whalon 1 wn app 804)
(State v oughton 26 wn app 74)
(State v perrett 86 wn app 312)

4. The misstatments was made so repeatedly, in such circumstances, and so egregiously that there was a substantial likihood it effected the jury's verdict. (State v allen 182 wn 2d 364)

remedy

1. There is insufficient evidence to support charge requiring a dismissal.

2. In the least a new trial is in order with the "running Mail log" as a exhibit and state is barred from entering own testimony not in the record or backed by evidence. Such as "testify" "to infer". Also the elements seperated as necessary and a petrich instruction and limiting instruction entered. As well as a evidentiary hearing to include but not limited to franks, brady, predicate ones knapstad.

Thank you for your time and consideration

Truly

John M. Sanchez III

Attachment A

JON TUNHEIM
Thurston County Prosecuting Attorney
2000 Lakeridge Drive S.W.
Olympia, WA 98502
(360) 786-5540 Fax (360) 754-3358

A 1.

Jury Instructions

2. prove each element

7. commits tamp absent self from preceding

10. Following elements (1) w it tamp (2) person tampered w/ (3) accused state of mn

11. unanimous verdict "must decide the case for yourself

~~Jury instr~~

16

18-1-01054-34
CTINJY 64
Courts Instructions to Jury
3963905

FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2018 OCT -2 PM 5:04

Linda Myhre Enlow
Thurston County Clerk

IN THE SUPERIOR COURT OF WASHINGTON IN AND FOR THURSTON COUNTY	
STATE OF WASHINGTON, Plaintiff, vs. JOHN MICHAEL SANCHEZ, Defendant.	NO. 18-1-01054-34

COURT'S INSTRUCTIONS TO THE JURY

DATED this 2nd day of October, 2018.

JUDGE JOHN SKINDER

INSTRUCTION NO. 1

It is your duty to decide the facts in this case based upon the evidence presented to you during this trial. It also is your duty to accept the law from my instructions, regardless of what you personally believe the law is or what you personally think it should be. You must apply the law from my instructions to the facts that you decide have been proved, and in this way decide the case.

Keep in mind that a charge is only an accusation. The filing of a charge is not evidence that the charge is true. Your decisions as jurors must be made solely upon the evidence presented during these proceedings.

The evidence that you are to consider during your deliberations consists of the testimony that you have heard from witnesses and the exhibits that I have admitted during the trial. If evidence was not admitted or was stricken from the record, then you are not to consider it in reaching your verdict.

Exhibits may have been marked by the court clerk and given a number, but they do not go with you to the jury room during your deliberations unless they have been admitted into evidence. The exhibits that have been admitted will be available to you in the jury room.

One of my duties has been to rule on the admissibility of evidence. Do not be concerned during your deliberations about the reasons for my rulings on the evidence. If I have ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict. Do not speculate whether the evidence would have favored one party or the other.

In order to decide whether any proposition has been proved, you must consider all of the evidence that I have admitted that relates to the proposition. Each party is entitled to the benefit of all of the evidence, whether or not that party introduced it.

You are the sole judges of the credibility of each witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In considering a witness's testimony, you may consider these things: the opportunity of the witness to observe or know the things he or she testifies about; the ability of the witness to observe accurately; the quality of a witness's memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness's statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

The lawyers' remarks, statements, and arguments are intended to help you understand the evidence and apply the law. It is important, however, for you to remember that the lawyers' statements are not evidence. The evidence is the testimony and the exhibits. The law is contained in my instructions to you. You must disregard any remark, statement, or argument that is not supported by the evidence or the law in my instructions.

You may have heard objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer, and may have a duty to do so. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer's objections.

Our state constitution prohibits a trial judge from making a comment on the evidence. It would be improper for me to express, by words or conduct, my personal opinion about the value of testimony or other evidence. I have not intentionally done this. If it appeared to you that I have indicated my personal opinion in any way, either during trial or in giving these instructions, you must disregard this entirely.

You have nothing whatever to do with any punishment that may be imposed in case of a violation of the law. You may not consider the fact that punishment may follow conviction except insofar as it may tend to make you careful.

The order of these instructions has no significance as to their relative importance. They are all important. In closing arguments, the lawyers may properly discuss specific instructions. During your deliberations, you must consider the instructions as a whole.

As jurors, you are officers of this court. You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, prejudice, or personal preference. To assure that all parties receive a fair trial, you must act impartially with an earnest desire to reach a proper verdict.

INSTRUCTION NO. 2

The defendant has entered a plea of not guilty. That plea puts in issue every element of the crime charged. The State is the plaintiff and has the burden of proving each element of the crime beyond a reasonable doubt. The defendant has no burden of proving that a reasonable doubt exists as to these elements.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless during your deliberations you find it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence. If, from such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

INSTRUCTION NO. 3

The evidence that has been presented to you may be either direct or circumstantial. The term "direct evidence" refers to evidence that is given by a witness who has directly perceived something at issue in this case. The term "circumstantial evidence" refers to evidence from which, based on your common sense and experience, you may reasonably infer something that is at issue in this case.

The law does not distinguish between direct and circumstantial evidence in terms of their weight or value in finding the facts in this case. One is not necessarily more or less valuable than the other.

INSTRUCTION NO. 4

The defendant is not required to testify. You may not use the fact that the defendant has not testified to infer guilt or to prejudice him in any way.

INSTRUCTION NO. 5

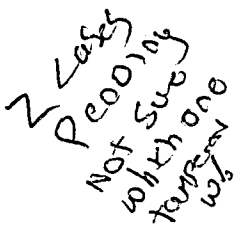
:t that Mr. Sanchez was detained at the Thurston County Jail during
:riod of the alleged events that give rise to the accusation in this case is not evidence of wrong-doing and must not be used by you to determine whether or not the State has proven its case beyond a reasonable doubt.

excessive/unwarranted
↑
Undue influence ← improper use of power (state) trust
Unfair Persuasion
↑
temporary persuasion, argument

Decene/Persuade
Implied
Criminal - Coercion -
"forcing official action"

argument by pros
against instruction
of Defendant.

Burdensome; repeatedly untruth over a period of
Time.
Must Someone believe Something untrue



INSTRUCTION NO. 6

The parties have agreed that certain facts are true. You must accept as true the following facts:

On March 22, 2017, the Defendant, John Michael Sanchez, was charged in State of Washington v. John Michael Sanchez, in Thurston County Superior Court Cause No. 17-1-00508-34. On September 1, 2017, the State filed a Witness List in Thurston County Superior Court Cause No. 17-1-00508-34, that lists Rachel Nickels as a witness. Thurston County Superior Court Cause No. 17-1-00508-34, is pending.

On September 19, 2017, the Defendant, John Michael Sanchez, was charged in State of Washington v. John Michael Sanchez, in Thurston County Superior Court Cause No. 17-1-01676-34. On June 13, 2018, the State filed a First Amended Witness List in Thurston County Superior Court Cause No. 17-1-01676-34, that lists Rachel Nickels as a witness. Thurston County Superior Court Cause No. 17-1-01676-34, is pending.

INSTRUCTION NO. 7

person commits the crime of tampering with a witness when he or she

s to induce a witness or person he or she has reason to believe is about to be called as a witness in any official proceeding to testify falsely or, without right or privilege to do so, to withhold any testimony or to absent himself or herself from any official proceedings.

INSTRUCTION NO. 8

fficial proceeding" means a proceeding heard before any legislative, judicial, administrative, or other government agency or official authorized to hear evidence under oath.

INSTRUCTION NO. 9

For purposes of this case, "family or household members" means persons who have a child in common, regardless of whether they have been married or have lived together at any time.

Alternative Means

INSTRUCTION NO. 10

To convict the defendant of the crime of tampering with a witness as charged, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about June 15, 2018, the defendant attempted to induce Rachel Nickels to testify falsely, or without right or privilege to do so, withhold any testimony or absent herself from any official proceeding; and

(2) That Rachel Nickels was a witness or a person the defendant had reason to believe was about to be called as a witness in any official proceedings; and.

(3) That any of these acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 11

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to re-examine your own views and to change your opinion based upon further review of the evidence and these instructions. You should not, however, surrender your honest belief about the value or significance of evidence solely because of the opinions of your fellow jurors. Nor should you change your mind just for the purpose of reaching a verdict.

INSTRUCTION NO. 12

When you begin deliberating, you should first select a presiding juror. The presiding juror's duty is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel the need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. In your question, do not state how the jury has voted. The presiding juror should sign and date the question and give it to the bailiff. I will confer with the lawyers to determine what response, if any, can be given.

You will be given the exhibits admitted into evidence, these instructions, and verdict forms for recording your verdicts. Some exhibits and visual aids may have been used in court but will not go with you to the jury room. The exhibits that have been admitted into evidence will be available to you in the jury room.

You must fill in the blank provided in the verdict forms the words "not guilty" or the word "guilty", according to the decision you reach.

You will also be given a special verdict form for the crime charged. If you find the defendant not guilty of this crime, do not use the special verdict form. If you find the defendant guilty of this crime, you will then use the special verdict

form and fill in the blank with the answer "yes" or "no" according to the decision you reach. In order to answer the special verdict form "yes," you must unanimously be satisfied beyond a reasonable doubt that "yes" is the correct answer. If you unanimously agree that the answer to the question is "no," you must fill in the blank with the answer "no." If after full and fair consideration of the evidence you are not in agreement as to the answer, then do not fill in the blank for that question.

Because this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the verdict forms to express your decision. The presiding juror must sign the verdict forms and notify the bailiff. The bailiff will bring you into court to declare your verdict.

A2. Qwillan argument

argument for

new trial / arrest of Judgment

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF THURSTON

STATE OF WASHINGTON, Plaintiff, vs. JOHN MICHAEL SANCHEZ, Defendant.	NO. 18-1-01054-34 DEFENDANT'S MOTION FOR NEW TRIAL

The Defendant herein, JOHN MICHAEL SANCHEZ, by and through his attorney, ROBERT M. QUILLIAN, pursuant to CrR 7.5 (a) (5), (6), (7), and (8), hereby moves for a new trial in this matter.

The basis for this motion is that the jury was instructed by the Court on an alternative means of committing the crime of Tampering with a Witness, which alternative means was not set forth in the charging document in this case.

DATED: December 3, 2018.

ROBERT M. QUILLIAN,
Attorney for Defendant
WSBA #6836

ROBERT M. QUILLIAN
Attorney at Law
3221 32nd Ct. NW
Olympia, WA 98502
(360) 352-0166

MEMORANDUM

By Information filed on June 18, 2018, the Defendant, JOHN MICHAEL SANCHEZ, was charged with a single count of Tampering with a Witness/Domestic Violence. A copy of the Information is attached hereto as Exhibit A. In relevant part, the Information charged with Defendant with attempting to induce Rachel Nickels "to testify falsely or, without right or privilege to do so, to withhold any testimony."

The case was tried to a jury on October 1 and 2, 2018, with the jury returning s verdict of "Guilty" on October 2, 2018. At the conclusion of testimony, and after consultation with counsel concerning jury instructions, the trial judge instructed the jury as to the definition of the crime of Tampering with a Witness (Court's Instruction No. 7), and as to the elements the State was require to prove beyond a reasonable doubt in order to convict Mr. Sanchez of the crime of Tampering with a Witness (Court's Instruction No. 10). Copies of the Court's Jury Instructions Nos. 7 and 10 are attached hereto as Exhibit B. These two jury instructions were entirely consistent with jury instructions proposed by the State in its Plaintiff's Proposed Jury Instructions.

The crime of Tampering with a Witness (RCW 9A.72.120) is an "alternative means" crime, meaning that the statute sets forth more than one way to commit the crime. Those alternative means, as to this crime, are set forth in RCW 9A.72.120 (1)(a), (b), and (c). The Information herein, previously referenced and attached as Exhibit A, specifically charges Mr. Sanchez under RCW 9A.72.120 (1)(a), accusing him of attempting to induce Ms. Nickels to "testify falsely or, without right or privilege to do so, withhold any

ROBERT M. QUILLIAN
Attorney at Law
3221 32nd Ct. NW
Olympia, WA 98502
(360) 352-0166

testimony", exactly mirroring the statutory language. However, the Court's jury instructions 7 and 10, attached as Exhibit B, add another uncharged alternative means to the jury charge. Specifically, both of those jury instructions add the alternative means set forth in RCW 9A.72.120 (1)(b) to the jury's charge. This alternative means, which involves attempting to induce a witness to "absent himself or herself from such proceedings", is nowhere to be found in the charging document.

The 2003 Washington Court of Appeals case of *State v. Chino*, 117 Wn. App. 531, 72 P. 3d 256 (2003), is on all fours with the instant case. In *Chino*, the charge was Intimidating a Witness, and the same alternative means as in the instant case, i.e. "absenting himself or herself from such proceedings", was included in the jury instructions, but had not been included in the charging document itself. In reversing Chino's conviction for Intimidating a Witness and remanding for a new trial, the Court of Appeals stated:

> Mr. Chino challenges the instructions for the first time on appeal. The constitution requires the jury be instructed on all essential elements of the crime charged. *Linehan*, 147 Wn.2d at 653; U.S. Const. Amend. VI; Const. art. I, sec. 22. An instruction that omits an essential element of a crime relieves the State of its burden of proving each element of the crime beyond a reasonable doubt. Id. at 654. Such an error is a violation of due process and harmless solely if the reviewing court is 'convinced beyond a reasonable doubt any reasonable jury would reach the same result absent the error.' Id. (citing *State v. Easter*, 130 Wn.2d 228, 242, 922 P.2d 1285 (1996)). Because jury instructions omitting elements of the charged crime constitute 'a manifest error affecting a constitutional right,' this court may consider the issue for the first time on appeal. RAP 2.5(a)(3); see *State v. Eastmond*, 129 Wn.2d 497, 502, 919 P.2d 577 (1996).

ROBERT M. QUILLIAN
Attorney at Law
3221 32nd Ct. NW
Olympia, WA 98502
(360) 352-0166

Generally, the crime upon which the jury is instructed is limited to the offense charged in the information. State v. Foster, 91 Wn. 2d 466, 471, 589 P. 2d 789 (1979). Recognized exceptions exist for situations where the defendant is convicted of a lesser included offense of the crime charged in the information, and where the defendant is convicted of a lesser degree of the crime specifically charged in the information. *Id.*; see also *State v. Peterson*, 133 Wn. 2d 885, 889, 948 P. 2d 381 (1997).

Here, the information and Instruction No. 6 pertain to the same core crime, intimidation of a witness, but differed in alternative means. In this connection, the applicable statute states:

> A person is guilty of intimidating a witness if a person, by use of a threat against a current or prospective witness, attempts to:
>
> (a) Influence the testimony of that person;
>
> (b) Induce that person to elude legal process summoning him or her to testify;
>
> (c) Induce that person to absent himself of herself from such proceedings; or
>
> (d) Induce that person not to report the information relevant to a criminal investigation or the abuse or neglect of a minor child, not to have the rime or the abuse or neglect of a minor child prosecuted, or not to give truthful or complete information relevant to a criminal investigation or the abuse or neglect of a minor child.

RCW 9A.72.110(1).

'When a statute sets forth the alternative means by which a crime can be committed, the charging document may charge none, one, or all of the alternatives, provided the alternatives charged are not repugnant to each other.' *State v. Williamson*, 84 Wn. App. 37, 42, 924 P. 2d 960 (1996) (citing *State v. Noltie*, 116 Wn. 2d 831, 842, 809 P. 2d 190 (1991); *State v. Severns*, 13 Wn. 2d 542, 548, 125 P. 2d 659 (1942); *State v. Bray*, 52 Wn. App. 30, 34, 756 P. 2d 1332 (1988); see also *State v. Nicholas*, 55 Wn. App. 261, 272, 776 P. 2d 1385 (1989). Here, the information properly includes the relevant part of the alternative set forth in RCW 9A.72.110 (1)(d), but does not include the relevant part of the alternative set forth in RCW 9A.72.110(1)(a) through (c). Understandably, Mr. Chino does not

ROBERT M. QUILLIAN
Attorney at Law
3221 32nd Ct. NW
Olympia, WA 98502
(360) 352-0166

allege the information is deficient for omitting the remaining alternatives. *Williamson*, 84 Wn. App. At 42. Rather, he challenges the inclusion of uncharged alternatives within the 'to convict' instruction.

Instruction No. 6 sets forth an uncharged statutory alternative, inducing the witness to absent himself or herself from legal proceedings. RCW 9A.72.110(c). And the instruction includes part, but not all, relevant provisions of RCW 9A.72.110(d). In this connection, the information alleges, among other things, Mr. Chino attempted to induce Ms. Salinas 'to not give truthful or complete information relevant to a criminal investigation' CP at 47; see also RCW 9A.72.110(d) (in part). That specific allegation is absent from Instruction No. 6.

Where the information alleges solely one statutory alternative means of committing a crime, it is error for trial court to instruct the jury on uncharged alternatives, regardless of the strength of the trial evidence. *Severns*, 13 Wn. 2d at 348; *Williamson*, 84 Wn. App. At 42; *Nicholas*, 55 Wn. App. At 272-73; *Bray*, 52 Wn. App. At 34. 'One cannot be tried for an uncharged offense.' *Bray*, 52 Wn. App. At 34 (citing *State v. Brown*, 45 Wn. App. 571, 576, 726 P. 2d 60 (1986).

Here, it was error to instruct the jury on an alternative means not alleged in the information. *Williamson*, 84 Wn. App. At 42. Because the instructional error favored the prevailing party, it is presumed prejudicial unless it affirmatively appears the error was harmless. *Bray*, 52 Wn. App. At 34-35.

Even so, the error may be harmless if other instructions clearly and specifically define the charged crime. *Severns*, 13 Wn. 2d at 549; *Nicholas*, 55 Wn. App. at 273. Here, no instructions define the alternative means. It therefore remains possible that the jury convicted Mr. Chino on the basis of the uncharged alternative. Accordingly, the error was not harmless. Reversal and remand for a new trial on the intimidation charge is necessary. In light of this conclusion, it is unnecessary to separately discuss whether it was error to fail to include an instruction on unanimity.

Applying these principles to the facts of the instant case, there is no basis to distinguish this case from the *Chino* case. In both cases, the jury was instructed as to an

ROBERT M. QUILLIAN
Attorney at Law
3221 32nd Ct. NW
Olympia, WA 98502
(360) 352-0166

alternative means which was not part of the charging document. Additionally, in the instant case, the crime itself was defined for the jury (in Jury Instruction No. 7), also utilizing and setting forth the uncharged alternative means. As in *Chino*, there were no other jury instructions given to the jury which in any way cured this clear and constitutional deficiency in the instructions. The result is compelled by this clear case law – a new trial must be ordered.

DATED: December 3, 2018.

ROBERT M. QUILLIAN, WSBA #6836
Attorney for Defendant

ROBERT M. QUILLIAN
Attorney at Law
3221 32nd Ct. NW
Olympia, WA 98502
(360) 352-0166

EXHIBIT A

18-1-01054-34
INFO 1
Information
3308659

FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2018 JUN 18 PM 1:59

Linda Myhre Enlow
Thurston County Clerk

IN THE SUPERIOR COURT OF WASHINGTON IN AND FOR THURSTON COUNTY	
STATE OF WASHINGTON, Plaintiff, vs. JOHN MICHAEL SANCHEZ DESC: W/ M/511/160/BRN/BRN DOB: 01/31/1984 DL: SANCHJM161BU SID: 21845943 FBI: BOOKING NO. UNKNOWN PCN NO. UNKNOWN Defendant.	NO. 18-1-01054-34 **INFORMATION** ELIZABETH MCMULLEN Deputy Prosecuting Attorney Jointly Charged with Co-Defendant(s): N/A

Comes now the Prosecuting Attorney in and for Thurston County, Washington, and charges the defendant with the following crime(s):

COUNT 1 -TAMPERING WITH A WITNESS/DOMESTIC VIOLENCE, RCW 9A.72.120(1)(a) AND RCW 10.99.020 – CLASS C FELONY:
In that the defendant, JOHN MICHAEL SANCHEZ, in the State of Washington, on or about June 15, 2018, attempted to induce Rachel Nickels, a family or household member, pursuant to RCW 10.99.020, a witness or person he or she has reason to believe is about to be called as a witness in any official proceeding or a person whom he or she has reason to believe may have information relevant to a criminal investigation or the abuse or neglect of a minor child to testify falsely or, without right or privilege to do so, to withhold any testimony.

DATED this 18 day of June, 2018.

E M McMullen

ELIZABETH MCMULLEN, WSBA#45207
Deputy Prosecuting Attorney

JON TUNHEIM
Thurston County Prosecuting Attorney
2000 Lakeridge Drive S.W.
Olympia, WA 98502
(360) 786-5540 Fax (360) 754-3358

EXHIBIT B

INSTRUCTION NO. 7

A person commits the crime of tampering with a witness when he or she attempts to induce a witness or person he or she has reason to believe is about to be called as a witness in any official proceeding to testify falsely or, without right or privilege to do so, to withhold any testimony or to absent himself or herself from any official proceedings.

INSTRUCTION NO. 10

To convict the defendant of the crime of tampering with a witness as charged, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about June 15, 2018, the defendant attempted to induce Rachel Nickels to testify falsely, or without right or privilege to do so, withhold any testimony or absent herself from any official proceeding; and

(2) That Rachel Nickels was a witness or a person the defendant had reason to believe was about to be called as a witness in any official proceedings; and.

(3) That any of these acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF THURSTON

STATE OF WASHINGTON, Plaintiff, v. JOHN MICHAEL SANCHEZ, Defendant.	)	NO. 18-1-01054-34 DEFENDANT'S REPLY TO STATE'S RESPONSE TO DEFENSE MOTION FOR NEW TRIAL

The Defendant herein, JOHN MICHAEL SANCHEZ, by and through his attorney, ROBERT M. QUILLIAN, hereby replies to the State's Response to Defense Motion for New Trial as follows:

ERROR CONCEDED

At page 4 of its Response, the State concedes error occurring at trial, as set forth in the Defendant's original motion. The issue of error shall not, therefore, be further addressed by the Defendant, due to the concession by the State.

HARMLESS ERROR

The State, after conceding error as argued by the Defendant, goes on to argue that the instructional error was harmless. While instructional error as is present in the instant case, which is clearly violative of due process, as conceded by the State, is subject to a

harmless error analysis, the courts of Washington have set the bar extremely high in such cases in particular, before a finding of harmless error can be made.

One of the most recent cases setting forth this strict standard is the Division II case of *State v. Imokawa*, 4 Wn. App. 2d 545, 422 P. 3d 502 (2018). It was clearly held in that case that '[j]ury instructions that violate a defendant's right to due process require reversal unless the State can prove that the error was harmless **beyond a reasonable doubt.**" citing *State v. Brown*, 147 Wn.2d 330, 339, 58 P.3d 889 (2002) (Emphasis added).

The Washington Supreme Court, in the *Brown* case, *supra.*, quoting the United States Supreme Court case of *Neder v. United States*, 527 U.S. 1, 9, 119 S. Ct. 1827, 144 L. Ed. 2d 35 (1999), stated the "beyond a reasonable doubt" test as follows:

> In order to conduct its analysis, the Neder court set forth the following test for determining whether a constitutional error is harmless: "{W}hether it appears 'beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.'" Neder, 527 U.S. at 15 (quoting Chapman v. California, 386 U.S. 18, 24, 87 S. Ct. 824, 17 L. Ed. 2d 705 (1967)).

Thus, under well established law, such an error is subject to harmless error analysis, but the burden rests with the State to prove **beyond a reasonable doubt** that the error was indeed harmless. The States' Response, as well as the facts of this case and the record before the Court, can in no way establish that the constitutional instructional error in this case was harmless beyond a reasonable doubt.

In its Response, the State cites but one case dealing with constitutional structural error, and tries to argue from it that the error in the present case was harmless beyond a

reasonable doubt. That case is *State v. Severns*, 13 Wn. 2d 542, 125 P. 2d 659 (1942), a case which is cited in many of the cases dealing with this subject. The *Severns* case, in fact, is totally supportive of the Defendant's position in the instant case. To begin with, the type of error which occurred in *Severns* closely resembles the error occurring in this case, i.e. the giving of a jury instruction which contained an alternative means of committing the offense which was not charged in the charging document.

In response to the State's argument, to the effect that a trial judge may "define the offense" for the jury in ways other than the manner in which the case was charged, the Supreme Court was clear, at page 548, that such an argument had no merit at all:

> ...However, we have been cited no authority, nor do we know of any, which permits a court, when the information charges the act to have been done in only one of the ways or by one of the mans named in the statute, to instruct the jury that they may consider other ways or means by which the act may have been committed.
>
> We are firmly of the opinion that, where, as in the instant case, the information charges that the crime was committed in a particular way, under one subdivision of a statute, it is error for the trial court to instruct the jury, as was done in this case, that they might consider other ways or means by which the act charged might have been committed, regardless of the which the court may have permitted the testimony to take. **(NOTE: The seeming grammatical error in the final two lines of this quote are as stated, verbatim, in the opinion).**

While the quoted portion of *Severns* above reconfirms the fact that error was clearly committed, it is the further analysis of the Court which is truly relevant to the harmless error claim of the State. The State argues, at page 4 of its Response, that the *Severns* Court found the error to be "exacerbated by the prosecutor's reference to the

uncharged method during closing argument and by the absence of any subsequent instruction that expressly precluded the jury from considering the uncharged means of committing rape."

To begin with, the Court in *Severns* at no time indicated in any way that in the absence of those two facts, the error would have been harmless. However, nowhere in its Response does the State claim that there were **any** other jury instructions which somehow, or in any way, "expressly precluded the jury from considering the uncharged means" of committing Witness Tampering. Indeed, there are no such jury instructions in this case at all. Interestingly, the problematical jury instruction in *Severns* was a single instruction, which defined the crime of rape. In the instant case, the error occurs in two distinct jury instructions, one being definitional, and the other being the specific "elements" instruction, which explicitly define for the jury what they must find in order to convict. Thus, the instructional error in the instant case is far more apparent and far more serious than in *Severns*, in that the error is manifested in the very instruction perhaps most relied upon by the jury in its deliberations, viz. the "elements" instruction.

Secondly, as to the argument by the State that the comments of the prosecutor in *Severns* were problematical and "exacerbated" the constitutional error, a comparison of the comments of the prosecutor in *Severns* with the comments of the Deputy Prosecutor in the instant case reveals that the closing argument in Mr. Sanchez' case "exacerbated" the constitutional error far more than the argument of the prosecutor in *Severns*. The prosecutor in *Severns* made one reference to the uncharged means in his closing argument. That reference was immediately objected to by defense counsel, and the Court

indicated that the record was not clear whether there was any further argument was made to the uncharged means.

In contrast, the Deputy Prosecutor in the instant case has honestly identified three different times in her closing argument that she argued the uncharged means of "absenting oneself from an official proceeding". Those three areas will not be re-quoted here, as the transcript of closing argument was appended to the State's Response. However, it should be noted that the passage at page 17, lines 5-8 specifically argues **only** for the "absent oneself from an official proceeding" uncharged means, and argues no other means at all, charged or uncharged. Similarly, at the reference to pages 33-34, the Deputy Prosecutor, in her rebuttal to defense counsel's argument, summarizes the argument of defense counsel, again characterizing that the defense counsel's argument (that the letter in question is in no way "an attempt to get information to Ms. Nickels that she shouldn't come in to testify") as being "unreasonable". The significance is, again, that the **only** means mentioned to the jury in that portion of the argument is the uncharged "absent oneself from an official proceeding" means.

Simply put, the closing argument in the instant case is far more damaging and prejudicial than the brief comment made one time in the *Severns* case. Closing arguments are statements and comments made directly by counsel to the jury. The inclusion of an uncharged means in the closing argument in the instant case exacerbated the error, and simply negates any argument at all that the constitutional error here was somehow harmless error.

The State, at page 5 of its Response, at lines 12 through 18, makes a brief

argument based on "overwhelming evidence" and "judicial economy", and urges the Court to deny the motion to new trial, quoting from *State v. Tharp*, 96 Wn. 2d 591, 637 P. 2d 961 (1981). The *Tharp* case involved an appeal of evidentiary rulings concerning the admission of a prior conviction for auto theft and the fact that the Defendant was on DOC furlough at the time of the offense. Interestingly, the Court in *Tharp*, at page 599, specifically ruled that the standard it was utilizing **was not** the same standard the Court must apply in the instant case:

> We now consider whether the above evidentiary rulings constitute reversible error. They do not, in our view, constitute constitutional error. We do not, then, apply the rigorous "harmless error beyond a reasonable doubt" test. Rather, we apply the rule that error is not prejudicial unless, within reasonable probabilities, the outcome of the trial would have been materially affected had the error not occurred. State v. Cunningham, 93 Wash. 2d 823, 613 P.2d 1139 (1980).

Thus, the analysis in the *Tharp* case is not applicable to the standard which must be utilized in the instant case of constitutional instructional error, i.e. the "rigorous 'harmless error beyond a reasonable doubt'" test.

Similarly, the "overwhelming evidence" standard is of dubious value in cases such as this involving constitutional instructional error. This was made clear in the case of *State v. Recuenco*, 154 Wn.2d 156, 159, 110 P.3d 188 (2005), rev'd and remanded by *Washington v. Recuenco*, 548 U.S. 212, 126 S. Ct. 2546, 165 L. Ed. 2d 466 (2006), aff'd, 163 Wn.2d 482, 180 P.3d 1276 (2008), where the Court, doe to constitutional instructional error, reversed the imposition of a firearm enhancement to a defendant's sentence, even though the jury had unanimously found by special verdict that the

defendant was armed with a deadly weapon and **the only evidence of a weapon introduced at trial was of a firearm.** Thus, not only was the evidence "overwhelming" that the Defendant had been armed with a firearm, but it was the **only** evidence on that issue produced at trial. Nonetheless, the Court held the instructional error required a reversal of the firearm enhancement.

The *Recuenco* case was discussed in the Washington Supreme Court case of *State v. Campbell*, 163 Wn. App. 304, 260 P. 3d 235 (2011), where the Court stated:

> The State urges us to conclude that the error is harmless based on the strength of the State's evidence. We see several difficulties with that approach. Our Supreme Court has taken a strict stance concerning harmless error in special verdict instructions.

That being said, even if the "overwhelming evidence" standard was applicable to the instant case, the State's evidence against Mr. Sanchez was hardly so overwhelming as to the charged prongs of the statute, **as opposed to the uncharged prong**, as to conclude that there was harmless error in this case. The state of the evidence, the jury instructions (which contained no instructions focusing the jury on the charged means as opposed to the uncharged means), and the State's own closing argument all raise the distinct possibility that the jury could have convicted Mr. Sanchez based upon an uncharged means of committing the crime of Tampering with a Witness.

A new trial must be ordered.

DATED: January 14, 2019.

ROBERT M. QUILLIAN,
Attorney for Defendant
WSBA #6836

A 3 NCO No address

2017 SEP 21 PM 3:51

RECEIVED

186637

SUPERIOR COURT OF WASHINGTON IN AND FOR THURSTON COUNTY	No. 17-1-01676-34
THE STATE OF WASHINGTON, Plaintiff, vs. JOHN MICHAEL SANCHEZ Defendant.	☑ Pre-Trial ☐ Post Conviction ☐ Replacement Order (paragraph 10) **Domestic Violence No-Contact Order** (clj=NOCON, Superior cts =ORNC) Clerk's action required: Para 9

No-Contact Order

1. **Protected Person's Identifiers:**

R.L.N.
Name (First, Middle, Last)
09/05/1984 Female White
DOB Gender Race

If a minor, use initials instead of name, provide other info., and complete a Law Enforcement Information Sheet (LEIS).

Defendant's Identifiers:

Date of Birth	
01/31/1984	
Gender	Male
Race	White

2. **Defendant:**
   A. do not cause, attempt, or threaten to cause bodily injury to, assault, sexually assault, harass, stalk, or keep under surveillance the protected person.
   B. do not contact the protected person, directly, indirectly, in person or through others, by phone, mail, or electronic means, except for mailing or service of process of court documents through a third party, or contact by the defendant's lawyers.
   C. do not knowingly enter, remain, or come within 500 ft (1,000 feet if no distance entered) of the protected person's residence, school, workplace, other:
   PERSON
   D. other:

3. **Firearms and Weapons, Defendant:**
   ☑ do not obtain or possess a firearm, other dangerous weapon or concealed pistol license. (Pre-Trial, RCW 9.41.800. See findings in paragraph 7, below.)
   ☑ do not obtain, own, possess or control a firearm. (Post Conviction or Pre-Trial, RCW 9.41.040.)
   ☑ shall **immediately surrender** all firearms and other dangerous weapons within the defendant's possession or control and any concealed pistol license to the following law enforcement agency:
   THURSTON COUNTY SHERIFF. (Pre-Trial Order, RCW 9.41.800.)

4. **This no-contact order expires on** ☑ 09/21/22 at 5:00 p.m. (date and time) or
   ☐ 1 year ☐ 2 years from today's date.
   If no date is entered and no box is checked, this order expires 5 years from today's date.
   The court may extend a no-contact order even if the defendant does not appear at arraignment.

Warning: Violation of the provisions of this order with actual notice of its terms is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony. **You can be arrested even if the person protected by this order invites or allows you to violate the order's prohibitions.** You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order upon written application. (Additional warnings on page 2 of this order.)

Jon Tunheim
Thurston County Prosecuting Attorney
2000 Lakeridge Drive S.W. Olympia, WA 98502
360/786-5540 Fax 360/754-3358

8

A4. NCO RCW Rules

Rev. Code Wash. (ARCW) § 26.50.110

Statutes current through the 2018 Regular Session

Annotated Revised Code of Washington > Title 26 Domestic Relations (Chs. 26.04 — 26.60) > Chapter 26.50 Domestic Violence Prevention (§§ 26.50.010 — 26.50.903)

26.50.110. Violation of order — Penalties.

(1)

(a) Whenever an order is granted under this chapter, chapter 7.92, 7.90, 9A.40, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.10, *26.26, or 74.34 RCW, any temporary order for protection granted under chapter 7.40 RCW pursuant to chapter 74.34 RCW, or there is a valid foreign protection order as defined in RCW 26.52.020, and the respondent or person to be restrained knows of the order, a violation of any of the following provisions of the order is a gross misdemeanor, except as provided in subsections (4) and (5) of this section:

(i) The restraint provisions prohibiting acts or threats of violence against, or stalking of, a protected party, or restraint provisions prohibiting contact with a protected party;

(ii)A provision excluding the person from a residence, workplace, school, or day care;

(iii)A provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location;

(iv)A provision prohibiting interfering with the protected party's efforts to remove a pet owned, possessed, leased, kept, or held by the petitioner, respondent, or a minor child residing with either the petitioner or the respondent; or

(v)A provision of a foreign protection order specifically indicating that a violation will be a crime.

(b) Upon conviction, and in addition to any other penalties provided by law, the court:

(i) May require that the respondent submit to electronic monitoring. The court shall specify who shall provide the electronic monitoring services, and the terms under which the monitoring shall be performed. The order also may include a requirement that the respondent pay the costs of the monitoring. The court shall consider the ability of the convicted person to pay for electronic monitoring.

(ii) Shall impose a fine of fifteen dollars, in addition to any penalty or fine imposed, for a violation of a domestic violence protection order issued under this chapter. Revenue from the fifteen dollar fine must be remitted monthly to the state treasury for deposit in the domestic violence prevention account.

(2)A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order issued under this chapter, chapter 7.92, 7.90, 9A.40, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.10, *26.26, or 74.34 RCW, any temporary order for protection granted under chapter 7.40 RCW pursuant to chapter 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020, that restrains the person or excludes the person from a residence, workplace, school, or day care, or prohibits the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, if the person restrained knows of the order. Presence of the order in the law enforcement computer-based criminal intelligence information system is not the only means of establishing knowledge of the order.

Rev. Code Wash. (ARCW) § 10.99.020

Statutes current through the 2018 Regular Session

Annotated Revised Code of Washington > Title 10 Criminal Procedure (Chs. 10.01 — 10.114) > Chapter 10.99 Domestic Violence — Official Response (§§ 10.99.010 — 10.99.901)

10.99.020. Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1)"Agency" means a general authority Washington law enforcement agency as defined in *RCW 10.93.020*.

(2)"Association" means the Washington association of sheriffs and police chiefs.

(3)"Family or household members" means spouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

(4)"Dating relationship" has the same meaning as in *RCW 26.50.010*.

(5)"Domestic violence" includes but is not limited to any of the following crimes when committed by one family or household member against another:

(a) Assault in the first degree (*RCW 9A.36.011*);

(b) Assault in the second degree (*RCW 9A.36.021*);

(c) Assault in the third degree (*RCW 9A.36.031*);

(d) Assault in the fourth degree (*RCW 9A.36.041*);

(e) Drive-by shooting (*RCW 9A.36.045*);

(f) Reckless endangerment (*RCW 9A.36.050*);

(g) Coercion (*RCW 9A.36.070*);

(h) Burglary in the first degree (*RCW 9A.52.020*);

(i) Burglary in the second degree (*RCW 9A.52.030*);

(j) Criminal trespass in the first degree (*RCW 9A.52.070*);

(k) Criminal trespass in the second degree (*RCW 9A.52.080*);

(l) Malicious mischief in the first degree (*RCW 9A.48.070*);

(m) Malicious mischief in the second degree (*RCW 9A.48.080*);

(n) Malicious mischief in the third degree (*RCW 9A.48.090*);

(o) Kidnapping in the first degree (*RCW 9A.40.020*);

(p) Kidnapping in the second degree (*RCW 9A.40.030*);

(q) Unlawful imprisonment (*RCW 9A.40.040*);

(r) Violation of the provisions of a restraining order, no-contact order, or protection order restraining or enjoining the person or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location (*RCW 10.99.040*, *10.99.050*, *26.09.300*, *26.10.220*, **26.26.138*, *26.44.063*, *26.44.150*, *26.50.060*, *26.50.070*, *26.50.130*, *26.52.070*, or *74.34.145*);

(s) Rape in the first degree (*RCW 9A.44.040*);

(t) Rape in the second degree (*RCW 9A.44.050*);

(u) Residential burglary (*RCW 9A.52.025*);

(v) Stalking (*RCW 9A.46.110*); and

(w) Interference with the reporting of domestic violence (*RCW 9A.36.150*).

(6)"Employee" means any person currently employed with an agency.

(7)"Sworn employee" means a general authority Washington peace officer as defined in *RCW 10.93.020*, any person appointed under *RCW 35.21.333*, and any person appointed or elected to carry out the duties of the sheriff under chapter 36.28 RCW.

(8)"Victim" means a family or household member who has been subjected to domestic violence.

History

2004 c 18 § *2*; 2000 c 119 § *5*; 1997 c 338 § *53*; 1996 c 248 § *5*; 1995 c 246 § *21*; 1994 c 121 § *4*; 1991 c 301 § *3*; 1986 c 257 § 8; 1984 c 263 § 20; 1979 ex.s. c 105 § 2.

Annotations

Notes to Decisions

Assault.

"Dating relationship."

Domestic violence.

"Family or household members."

Interfering with domestic violence reporting.

Predicate offense of residential burglary.

Relation to federal law.

Assault.

Defendant was properly convicted because the court did not err by admitting evidence that he had previously promoted the prostitution of the alleged victim, and counsel was not ineffective for failing to object to the admission

A 5. conflict of interest.
OAC

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

THE STATE OF WASHINGTON, Plaintiff, vs. JOHN MICHAEL SANCHEZ, Defendant.	NO. 17-1-01676-34 MOTION FOR WITHDRAWAL OF COUNSEL

I. MOTION

Comes now the defendant, and moves this court to remove Mr. Shackleton and all attorneys who are employed by Thurston County Public Defense (previously known as the Office of Assigned Counsel). The defendant has a pending bar complaint filed against the aforementioned office and believes that it would be a conflict of interest for an attorney who is an employee of the office to represent him. In the alternative, Mr. Sanchez moves to proceed pro se with a stand by counsel not employed by Thurston County Public Defense appointed.

DATED this 9th day of October, 2017.

Respectfully submitted on behalf
of Mr. John M. Sanchez:

James T. Shackleton, WSB #18174

THURSTON COUNTY
PUBLIC DEFENSE
926 24th Way SW
Olympia, WA 98502
(360) 754-4897

E-FILED
THURSTON COUNTY, WA
SUPERIOR COURT
September 29, 2017
Linda Myhre Enlow
Thurston County Clerk

SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY

STATE OF WASHINGTON,
Plaintiff,
vs.
JOHN MICHAEL SANCHEZ,
Defendant.

NO. 17-1-01676-34

NOTICE OF APPEARANCE

TO: Clerk of the Court; and
ELIZABETH A MCMULLEN, Thurston County Prosecuting Attorney

THIS MATTER having come before the above-entitled court upon the filing of an Information by the Thurston County Prosecuting Attorney, and the Court having found the defendant indigent and the defendant having requested counsel, you are hereby notified that:

JAMES SHACKLETON, #18174 is appointed as counsel for the defendant.

The undersigned hereby requests that any and all further pleading, notices, documents, including discovery, and other papers herein be served on the appointed attorney of record and further requests that the Office of the Prosecuting Attorney provide to the attorney of record, copies of all reports and other evidence that said prosecutor intends to introduce at trial of the above-named defendant.

The assigned attorney has filed with the court the certification requirements of the court rules.

FURTHER, the undersigned requests that a copy of the defendant's criminal history, NCIC report and/or any other criminal history or reports in the possession of the prosecutor and/or available to him/her be immediately forwarded to the appointed attorney of record.

DATED: September 29, 2017

James T. Shackleton

James Shackleton, #18174

THURSTON COUNTY
PUBLIC DEFENSE
926 24TH Way SW
Olympia, WA 98502
(360) 754-4897

A 6 faulty Jury instructions

5. Jury instructions.

Discussions regarding Jury Instructions

1.) rp 250 (13,14) P: "I ask the court to use the States proposed "to prosecutor": convict instructions, not defense counsels"

2.) rp 255 (7)(10) colloquy between court and defense regarding testifying. court: "- not following defense offer to deviate from WPIC's or splitting up the instructions".

3 rp 241 (6-9) = WPIC puts Multiple elements within the same paragraph and Defense: reduces the constitutional burden to prove each and every element beyond a reasonable doubt."

~~(11-16)~~

(11-12) = they have to prove each individually beyond a reasonable doubt."

(21-25) = So this reduces the States burden by making it appear that this is one long thing that they have to prove, rather than each individual element that has to be proved beyond a reasonable doubt."

rp 242 (18-23) = I make this whole record with regard to Jury instructions based on Mr Sanchez's right to a fair and impartial Jury and all of his constitutional rights under Washington and US constitution".

4. exception/objection to Jury instructions

rp 271 (17-18)(21-23) prosecutor: = state has no objections to Jury instructions".

court: = counsel did you have sufficient time to go over proposed instructions?

Defense: = I did"

A7

Court instructs Jury

Jury instructions

Exhibits

admissibility

evidence

testimony courts instructions to jury

1.) rp 275 (4) = accept the law from instructions"

2.) rp 275 (17-18) = exhibits that I have admitted during trial".

3.) rp 276 (2-3) = one of my duties has been to rule on the admissibility of evidence"

4.) rp 276 (15-16) = each party is entitled to the benefit of all of the evidence."

5.) rp 282 (14-15) = absent herself from any official proceeding"

6.) rp 282 (3)(9)(11)(18)(21) = instruction #9", = following elements of crime must be proven" = (1), (2), (3)"

7.) rp 231 (16), (22-23) = instruction #7" = absent herself from any official proceeding"

8.) colloquy between court and def regarding testifying 255 (7)(10)
= Not following defense offer to deviate from wpics or splitting up the instructions".

discussion regarding jury instructions

9. rp 242

testimony courts instructions to jury

1.) rp 275 (4) = accept the law from instructions"

2.) rp 275 (17-18) = exhibits that I have admitted during trial".

3.) rp 276 (2-3) = one of my duties has been to rule on the admissibility of evidence"

4.) rp 276 (15-16) = each party is entitled to the benefit of all of the evidence.

5.) rp 282 (14-15) = absent herself from any official proceeding"

6.) rp 282 (3)(9)(11)(18)(21) = instruction #9", = following elements of crime must be proven" = (1), (2), (3)"

7.) rp 291 (16), (22-23) = instruction #7" = absent herself from any official proceeding"

8.) colloquy between court and def regarding testifying 255 (7)(10)
= Not following defense offer to deviate from wpics or splitting up the instructions".

discussion regarding jury instructions

9. rp 292

A 8 Indigent log

Deleo exhibit

Direct examination Jenny Hovda

wit tamp

Transcript testimony - Indigent Mailing log

1.) Jenny Hovda rp 143 (5) = "return address has to be in Mades name".

2.) rp 141 (3-4) = "Make sure the indigent mail has been correctly scanned".

3.) rp 140 (3-4) = "once verified their name is put on the log and the date they sent out the letter".

4.) rp 139 (23) = "we have a running log"

Hovda

letter read into record

1.) rp 155 (3-4) but atleast its not -- and I cant read the writing on that part"

2. rp 155 (8,9) = returning calls and not -- and again I cant read the writing".

1.) Indigent log

cross examination

5. rp 185 (14-15) = So there is a indigent log, is that right?"
A: = there is".
(17-18) = So there is a recording of who sent what letter what day?"
A: = correct".

6.
rp 167 (23-25) = whats been previously marked by the clerk as defense: defendants exhibit 9, May I approach?"

7.
rp 168 (8-16) = do you recognize this, its heavily redacted?
A: I believe I recognize what it is representing. yes
(11-13) = is that a fair and accurate representation of your memory of that particular document?"
A: = Yes".
(14-16) = and what is that?
A: = It appears to be a very snippet of the mail log."

8.
rp 168 (20-22) = I would ask at this time that this be admitted into evidence whats been marked exhibit 9".
rp 169 (3-4) Prosecutor = State objects based on relevance and foundation".
Argument outside presence of jury

9.
rp 170 (8-9) Court = State has objected based on relevance and foundation".

10.
rp 170 (13-15) Defense = this is the indigent log mentioned in direct testimony"
= this is the actual log that I was provided with by the jail".

11.
rp 170 (19-22) Defense = this is what I was able to obtain under a public records request, it shows Kyle Baker sent a letter on the 14th and John Sanchez on the 10th so thats how its relevant.

12.
rp 171 (9-11) = these documents aren't certified, I dont believe a proper foundation has been laid".

13. Prosecutor
rp 171 (16-17) Court = the court will sustain the objection".

14. 2.7 Indigent log Beylonlog

16. rp 174 (9-11) court = It appears to be a very small snippet of the mail logo. that's not a foundation for it to come in".

15.

17. rp174 (13-23) Defense = OBJect to courts ruling, my clients accused of a crime by the state and in a effort to find evidence and request a record, based on theirown redaction standards its unidentifiable, how am I to obtain that information if what I get is so heavily redacted."

exhibits that where created.

evidentiary issues

16. 2.) Indigent log entered as evidence

rp 175 (1) D = Vickie Wilson at the Jail".

17.

rp 175 (2-5) Court = the court is going to rule based on the information that is provided to the court, there is not a sufficient basis, the objection is Sustained".

18.

rp 175 (21-24) Court = again this is another exhibit that the court has not seen. So I dont know anything about it, except the fact that MS Colaiuta had just had some things Marked by the clerk".

19.

rp 176 (4-6) Court = it is difficult for me to be able to speak as to these exhibits without knowing what they are."

5. oral rullings of the court Kyle Baker booking record

rp 181 (17-18) court = as to the documents themselves, the states objections will be Sustained".

(3-5) = is a four page document that is the booking information for Kyle Baker".

6.

Rpp 182 (11) = the court is not allowing their admission".

7.) rp 180 (5-10) = clearly relevant as Kyle Baker is the return addressee defense on the envelope, it demonstrates the specific dates he was in custody and they coincide with the potential dates associated So that he could in fact have sent the letter".

8.) rp 179 (1-3) = that does not make anything more or less likely to have occured prosecutor: therefor it is not relevant".

A 9

Statments

letter witness/victim/court/prosecutor

cant read

lacking element

2. Discussions concerning letter

Inability to read letter

1) rp 130 (11-12) prosecutor = "letter is hard to read because it is written in pencil on yellow paper".

2) rp 132 (24-25) " " = "I'm handing forward to the court the best copy of the letter that the state has".

3) rp 133 (5) " " = "It just does not copy well"

4) rp 134 (18-19)(23-25) Court = "assuming a adequate foundation is established by the state" = "the letter would properly be admitted into evidence" = "the reading of the letter is problematic".

5.) rp 135 (1)(3)(10-11) Court = "it is not easy to read" = "it is problematic with this piece of evidence, based on its inherent difficulty to read".

letter read into record (Hovda)

6. rp 155 (3-4) Hovda = "but atleast it's not -- and I can't read the writing on that part".

7. rp 155 (8-9) Hovda = "return calls and not -- and again I can't read the writing".

Discussion regarding Motions - States exhibits

8. rp 8 (15,18) = "the only exhibit the state has is a letter".

3.

Rachel Nickels testimony

letter referencing response

9. 221 (11,12) Q = "does anything stand out to you?"

10. 221 (18-19) = Just the stuff that is mean, the name calling".

13. 228 (19-20) Q = this is the first time you seen this? Yes"
(21-22) Q = this didnt come to you in the Mail? No".
(23-24) Q = your just reading it new for the very first time? Yeah".

14. RP 230 (23-25) Q = if you where asked to do Something, would you be persuaded to do the things it asked you to do?"
(25) = Not Anymore".

~~Kyle Baker~~

Kyle Baker response

231 (17-19) Q = So you would have no way of identifying his hand writing? Is that fair?"
(19) A = fair, true".

A 10. Dismissal and Closing

prosecutor closing argument

1 rp 286 (17-18) = "accept the laws from these instructions"

2 rp 314 (12-16) = the state has proven each and every element of the crime charged beyond a reasonable doubt. I ask you to return the only verdict the evidence supports. thats a verdict of guilty".

3. rp 314 (3-4) = "your considering the evidence that was presented to you".

4) rp 317 (21-24) = the writing on the yellow piece of paper, that is where the witness tampering comes from, That is an attempt to induce somebody to withhold their testimony".

5) rp 299 (3-4) = "but atleast its not ten to life".

6) rp 299 (9-10) = returning phone calls and not testifying.

7) rp 299 (11) = "he's asking her not to come to court to testify".

8) RP 299-300 (23-1) to ask somebody not to come to court to testify"

9) RP 300 (2-3) = returning calls and not testifying".

10) rp 300 (17-20) = the state has proven each and every element of the charge of tampering with a witness beyond a reasonable doubt, I'd ask you to find the defendant guilty.

11) rp 298 (8,9) 'absence herself from any official proceeding"

12) rp 296 (15-20) = instruction 10, to convict Roadmap instruction lays out the elements state has to prove in order for you to return a verdict of guilt."

Sp88 (5) "I rely on the instruction packet"
(10,11) rely on the instructions because that is what the law is".

4. req for dismissal

defense / prosecutor response to defense req for dismissal.

14.) Rp 270 (5,6) withheld herself from official proceedings".

15.) rp 266 (III 24) D state has failed to prove each and every element beyond a reasonable doubt".

16.) rp 270 (12) = but atleast its not 10 to lifes"
(16) = returning calls and not testifying".

5. Jury instructions

exception/objection to Jury instructions

1. rp 271 (17-18), (21-22) (23) = state has no objections to Jury instructions"
= Colaiuta did you have sufficient time to go thru proposed instructions?" = I did".

discussion regarding Jury instructions

1.) rp 250 (13,14) = I'd ask the court to use the states proposed
= to convict instructions, not defense counsels.